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See also cases Nos. 471. 472 - 531 - 532

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1934.

## No. 270

NORMAN C. NORMAN, PETITIONER,

*vs.*

THE BALTIMORE AND OHIO RAILROAD COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

PETITION FOR CERTIORARI FILED AUGUST 8, 1934.

CERTIORARI GRANTED OCTOBER 8, 1934.

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1934**

# No.

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NORMAN C. NORMAN, PETITIONER,

*vs.*

THE BALTIMORE AND OHIO RAILROAD COMPANY

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

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## IN COURT OF APPEALS OF NEW YORK

NORMAN C. NORMAN, Plaintiff-Appellant,
against
THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendant-Respondent

STATEMENT UNDER RULE 234

This action was commenced by the service of a summons and complaint upon the defendant on February 1st, 1934. The complaint was duly amended on March 9, 1934. Defendant served its answer to the amended complaint and issue was joined by the service of plaintiff's reply on March 9th, 1934.

The full name of the parties appears in the above title. There has been no change of parties or of attorneys herein.

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[fol. 2] IN SUPREME COURT OF NEW YORK

NORMAN C. NORMAN, Plaintiff,
against
THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendant

NOTICE OF APPEAL TO APPELLATE DIVISION

SIRS: Please take notice, that the plaintiff hereby appeals to the Appellate Division of the Supreme Court, for the First Judicial Department, from the judgment entered in the office of the Clerk of the County of New York on the 20th day of March, 1934, in favor of plaintiff and against the said defendant, for the sum of Twenty-two and 50/100 ($22.50) Dollars, and from the order entered in said office on said date, denying plaintiff's motion in all respects to strike out the affirmative defense contained in the answer, and for judgment on the pleadings from each and every part of said judgment and order.

Dated New York, March 20th, 1934.

Yours, etc., Dwyer & Redfield, Attorneys for Plaintiff, Office & P. O. Address: 420 Lexington Avenue, Borough of Manhattan, City of New York.

[fol. 3] To Cravath, de Gersdorff, Swaine & Wood, Esqs., Attorneys for Defendant, 15 Broad Street, New York City, Clerk of the County of New York.

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IN SUPREME COURT OF NEW YORK

NOTICE OF MOTION FOR ORDER STRIKING OUT PORTIONS OF DEFENDANT'S ANSWER, ETC.

SIRS: Please take notice, that upon the pleadings herein, the undersigned will move this Court at a Special Term Part III thereof, to be held at the County Courthouse, in and for the County of New York, on the 14th day of March, 1934, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order striking out the separate and distinct defenses, contained in paragraphs marked "Second" and "Third" in defendant's answer, consisting of new matter, on the ground that it appears on the face of said defenses that the same are insufficient in law, in that the laws, resolutions, proclamations, regulations and orders, as pleaded, in so far as they apply to the issues in this action, are unconstitutional in that they were enacted beyond the powers conferred by the Constitution [fol. 4] of the United States, and that they are violative of Amendment Five, Amendment Ten and Article 1, Section I of the Constitution of the United States, and for a further order directing judgment on the pleadings, pursuant to Rule 112 of the Rules of Civil Practice, and for such other and further relief as to the Court may seem just.

Dated New York, March 9th, 1934.

Yours, etc., Dwyer & Redfield, Attorneys for Plaintiff, Office & P. O. Address: 420 Lexington Avenue, Borough of Manhattan, City of New York.

To Cravath, de Gersdorff, Swaine & Wood, Esqs., Attorneys for Defendant, No. 15 Broad Street, New York, N. Y.

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IN SUPREME COURT OF NEW YORK

SUMMONS

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the

[fol. 5] complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated February 1st, 1934.

Dwyer & Redfield, Attorneys for Plaintiff, Office and Post Office Address: 420 Lexington Avenue, New York City.

IN SUPREME COURT OF NEW YORK

AMENDED COMPLAINT

The plaintiff, Norman C. Norman, complaining of the defendant, for his amended complaint, by his attorneys, Dwyer & Redfield respectfully alleges:

First: That at all times hereinafter mentioned, the plaintiff was and still is a citizen of the State of New York and of the United States of America.

[fol. 6] Second: That at all times hereinafter mentioned, the defendant was and still is a railroad corporation, duly organized under the laws of the State of Maryland, in the United States of America.

Third: That on or about the 1st day of February, 1930, the plaintiff purchased from the defendant, and is still the holder and owner of its certain gold bond in the principal sum of One thousand ($1,000) Dollars dated the first day of February, 1930, and designated by it as number 14569 of Thirty-Year 4½% Convertible Gold Bond, and due February 1, 1960. A copy of said bond is hereto annexed and is made a part hereof.

Fourth: That the defendant in its said obligation agreed to pay the holder thereof interest at the rate of four and one-half per cent per annum semi-annually on the first days of February and August of each year, upon presentation and surrender of the interest coupons annexed to the aforesaid bond, as they shall severally mature, payment of the principal and interest on the said bond to be made by the defendant at its office or agency in the Borough of Man-

hattan, City of New York, in gold coin of the United States of America, of or equal to the standard of weight and fineness existing on February 1st, 1930.

Fifth: That on the first day of February, 1930, the standard weight and fineness of a gold dollar of the United [fol. 7] States of America as a unit of value was fixed to consist of twenty-five and eight-tenths grains of gold, nine-tenths fine pursuant to the Act of Congress dated March 14th, 1900. (31 Stat. L-45.)

Sixth: That pursuant to the terms of said bond there became due and owing to the plaintiff from the defendant, on the first day of February, 1934, the sum of Twenty-two Dollars and Fifty cents, as interest on said bond, payable in gold as aforesaid.

Seventh: That on the first day of February, 1934, the plaintiff, by his agent, duly presented to the defendant and surrendered to the defendant, the aforesaid interest coupon annexed to the aforesaid bond, at its office in the Borough of Manhattan, City and State of New York, in the United States of America, and duly demanded of the defendant the payment of said sum in gold as provided for in said bond, and as hereinbefore mentioned, or its equivalent value in legal tender, existing on the first day of February, 1934.

Eighth: That the defendant refused to pay the aforesaid sum in gold, or the equivalent of gold in legal tender of the United States of America, existing on the first day of February, 1934.

Ninth: That by Act of Congress known as the "Gold Reserve Act of 1934" and by order of the President of the United States of America, acting pursuant to the authority vested in him by said Act, the standard unit of value of a [fol. 8] gold dollar of the United States of America was fixed to consist of fifteen and five-twenty-firsts grains of gold, nine-tenths fine from and after the thirty-first day of January, 1934.

Tenth: That the equivalent in legal tender of the United States existing on February 1st, 1934, of $22.50 in gold coin of the United States of the standard of weight and fineness existing on February 1st, 1930, was and still is $38.10.

Wherefore, plaintiff prays judgment of this Court:

1. That a declaration be made that upon the true construction of the bond aforesaid, the plaintiff is entitled, as holder thereof, to receive from the defendant from time to time by way of principal and interest thereunder and on the due dates of payment therefor, such a sum in gold, as represents the gold value of the nominal amount of each respective payment, such gold value to be ascertained in accordance with the standard of weight and fineness existing on the first day of February, 1930, and that accordingly, every gold dollar comprised in the nominal amount of each such payment, must be treated as representing the price in New York City in gold, calculated at due date of payment to consist of twenty-five and eight-tenths grains of gold, nine-tenths fine, specified in the "Act of Congress" dated March 14th, 1900, or any fraction thereof.

2. That a declaration be made in the alternative that the [fol. 9] plaintiff is entitled to receive upon such payments from the defendants, legal tender of the United States of America, equivalent in value to the gold of the standard weight and fineness existing on February 1st, 1930.

3. That such other and further declarations of the rights and legal relations of the parties to this action be made as shall be proper in the premises.

4. That further and consequential relief be awarded by judgment in favor of the plaintiff and directing the defendant to pay to the plaintiff the sum of $22.50 in gold coin of the United States of the standard of weight and fineness existing on February 1, 1930, together with interest thereon from February 1, 1934, or in the alternative, for the equivalent thereof in legal tender of the United States, to-wit, $38.10, with interest thereon from February 1, 1934.

5. Or in the alternative for a judgment in the sum of $38.10 with interest thereon from February 1, 1934.

6. And for such other and further relief as the plaintiff may be entitled to.

Dwyer & Redfield, Attorneys for Plaintiff, Office & P. O. Address: 420 Lexington Avenue, Borough of Manhattan, New York City.

(Verified and sworn to by Emanuel Redfield on March 8, 1934.)

[fol. 10] COPY OF BOND ANNEXED TO AMENDED COMPLAINT

United States of America

$1000 $1000

The Baltimore and Ohio Railroad Company

No. 14569. Thirty-Year 4½% Convertible Gold Bond Due February 1, 1960. No. 14569

The Baltimore and Ohio Railroad Company, a corporation of the State of Maryland (hereinafter called the Company), for value received, hereby promises to pay to the bearer, or, if this bond be registered, to the registered owner hereof, on February 1, 1960, the sum of One thousand dollars, and to pay interest on said sum from February 1, 1930, until the same shall be paid, at the rate of four and one-half per cent. (4½%) per annum, semi-annually on February 1 and August 1 in each year, upon presentation and surrender of the interest coupons hereto annexed as they shall severally mature. Payment of the principal of and interest on this bond will be made at the office or agency of the Company in the Borough of Manhattan, The City of New York, in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930.

This bond is one of an issue of bonds of the Company, known as its Thirty-Year 4½% Convertible Gold Bonds [fol. 11] (hereinafter called the Bonds), limited to an aggregate principal amount at any one time outstanding not exceeding Sixty-three million thirty-one thousand dollars ($63,031,000), and all issued or to be issued under an indenture dated February 1, 1930, between the Company and Bank of Manhattan Trust Company, as trustee (hereinafter called the indenture), to which indenture reference is hereby made for a statement of the rights thereunder of the bearers and registered owners of the Bonds and of the bearers of the coupons appertaining thereto, and of the terms and conditions upon which the Bonds may be converted into common stock of the Company.

The Bonds are subject to redemption, at the election of the Company, as a whole but not in part, on February 1, 1936, or on any semi-annual interest payment date there-

after to and including February 1, 1955, at one hundred and five per cent of the principal amount thereof, or on any semi-annual interest payment date thereafter at their principal amount, plus a premium of one-half of one per cent of such principal amount for each six months period between the redemption date and February 1, 1960, in either case together with the interest accrued thereon to the date designated for redemption, upon at least sixty days previous notice by publication in a daily newspaper printed in the English language and published and of general circulation in the Borough of Manhattan, The City of New York, the first publication to be made not less than sixty nor more [fol. 12] than ninety days prior to the redemption date specified in such notice, all as provided in the indenture.

At the election of the bearer or registered owner of this bond and upon presentation hereof, with all unmatured appurtenant coupons, at the office or agency of the Company in the Borough of Manhattan, The City of New York, this bond may, subject to the provisions of the indenture, be converted at the principal amount hereof into shares (of the par value of one hundred dollars each) of the common stock of the Company (1) at any time on or after February 1, 1931, and before February 1, 1936, at the conversion price of $120 per share, (2) at any time on or after February 1, 1936, and before February 1, 1941, at the conversion price of $125 per share, and (3) at any time on or after February 1, 1941, and on or before February 1, 1946, at the conversion price of $130 per share, with a cash adjustment in each case of dividends and accrued interest, provided, however, that upon the occurrence of any of certain events set forth in the indenture such conversion prices may be reduced or, in case of consolidation, merger, sale of assets, or change of par value of stock, the conversion terms modified, all as in the indenture provided. In case the Bonds shall be redeemed on or after February 1, 1936, and on or before February 1, 1946, the right to convert shall continue up to the close of business on the fifteenth day prior to the date of redemption.

[fol. 13] In case an event of default as defined in the indenture shall happen, the principal of all the Bonds may become or be declared due and payable in the manner and with the effect provided in the indenture.

No recourse shall be had for the payment of the principal of or the interest on this bond, or any part thereof, or for any claim based hereon or otherwise in respect hereof or of the coupons appertaining hereto or of the indenture, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law or by the enforcement of any assessment or otherwise, all such liability being by the acceptance hereof and as part of the consideration for the issue hereof expressly waived and released.

This bond shall pass by delivery unless registered in the name of the owner on the books of the Company at the office or agency of the Company in the Borough of Manhattan, The City of New York, such registration being noted hereon by or on behalf of the Company. After such registration, no transfer hereof shall be valid unless made at said office or agency by the registered owner hereof, in person or by duly authorized attorney, and similarly noted hereon; but this bond may be discharged from registration by a transfer in like manner to bearer, and thereupon transferability by de- [fol. 14] livery shall be restored; but this bond may again from time to time be registered or discharged from registration in the same manner. Such registration, however, shall not affect the negotiability of the coupons appertaining hereto, which shall continue to be transferable by delivery. The Company and the Trustee under the indenture may deem and treat the bearer, or, if this bond be registered, the registered owner, hereof as the absolute owner hereof for all purposes (except for the purpose of receiving payment of interest hereon), and neither the Company nor such Trustee shall be affected by any notice to the contrary.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the execution by the Trustee under the indenture of the certificate hereon endorsed.

In witness whereof, The Baltimore and Ohio Railroad Company has caused this bond to be signed in its corporate name by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by

its Secretary or one of its assistant Secretaries, and coupons for said interest, bearing a facsimile of the signature of its Treasurer, to be attached hereto, as of February 1, 1930.

The Baltimore and Ohio Railroad Company, by W. L. Smith, Vice-President.

Attest:

G. W. Greene, Assistant Secretary.

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[fol. 15] IN SUPREME COURT OF NEW YORK

ANSWER

Defendant, by its attorneys, Messrs. Cravath, de Gersdorff, Swaine & Wood, for its answer to the amended complaint herein:

First. Admits each and every allegation contained in the amended complaint.

For a separate and complete defense to the amended complaint, defendant alleges:

Second. On information and belief, by Sec. 5 (b) of an Act of Congress entitled "An Act to define, regulate and punish trading with the enemy and for other purposes," approved October 6, 1917, an Act of Congress entitled "An Act to provide relief in the existing National Emergency in banking and for other purposes," approved March 9, 1933, Public Act No. 87 of the Seventy-third Congress known as "The Gold Reserve Act of 1934," approved on January 30, 1934, and by executive orders, proclamations and regulations made pursuant to said Acts, defendant has been, since prior to February 1, 1934, and is prevented and prohibited from obtaining gold coin of the United States, and by said Acts and said executive orders, proclamations and regulations, and by Public Resolution No. 10 of the Seventy-third Congress, entitled "A Joint Resolution to Insure Uniform Value to the Coins and Currency of the United States," ap-
[fol. 16] proved June 5, 1933, defendant has been, since prior to February 1, 1934, and is prevented and prohibited from paying either principal or interest on the bond described in the paragraph of the amended complaint desig-

nated "Third", or on any coupon appurtenant thereto, either in gold coin of the United States of the standard of weight and fineness existing February 1, 1930, or in gold coin of the United States of any other weight and fineness, or otherwise than dollar for dollar, in coin or currency of the United States (other than gold coin and gold certificates), which is at the time of the maturity of such bond or coupons legal tender for the payment of public and private debts, and by said Public Resolution No. 10 has been, since prior to February 1, 1934, and is authorized and required to discharge the principal and interest of such bond and coupons as the same may mature and become due, dollar for dollar, in any coin or currency of the United States, which at the time is legal tender for public and private debts, and not otherwise.

Third. On the first day of February, 1934, upon presentment and surrender at the office of defendant in the Borough of Manhattan, City and State of New York, by the plaintiff, through his agent, of the interest coupon maturing on February 1, 1934, described in the paragraph of the amended complaint designated "Seventh," defendant duly tendered to said agent, in payment of the interest covered by said coupon, Twenty-two dollars and fifty cents ($22.50) in coin and currency of the United States, other than gold coin and gold certificates. Said coin and currency so ten-
[fol. 17] dered were at the time legal tender for public and private debts, but said agent refused to accept the same.

Cravath, de Gersdorff, Swaine & Wood, Attorneys for Defendant, Office & P. O. address: No. 15 Broad Street, Borough of Manhattan, New York, N. Y.

(Verified and sworn to by W. R. Bixler on March 9, 1934.)

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In Supreme Court of New York

Reply

The plaintiff, replying to the anwer of the defendant herein:

First: Admits each and every allegation contained in paragraph marked "Third" of the answer.

Wherefore, plaintiff demands the relief requested in the amended complaint herein.

Dwyer & Redfield, Attorneys for Plaintiff, Office & P. O. address: 420 Lexington Avenue, Borough of Manhattan, City of New York.

(Verified and sworn to by Emanuel Redfield on March 9, 1934.)

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[fol. 18] In Supreme Court of New York

Memorandum of Court

By Mr. Justice Dore

Norman v. B. & O. R R.—Motion denied to the extent indicated in order submitted pursuant to court's decision in open court. Order signed.

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In Supreme Court of New York

Order for Judgment—Filed March 20, 1934

Plaintiff having moved this Court for an order

(1) striking out the separate and distinct defense contained in the paragraphs marked "Second" and "Third" in defendant's answer to the amended complaint, consisting of new matter, on the ground that it appears upon the face of said defense that the same is insufficient in law, in that the laws, resolutions, proclamations, regulations and orders, as pleaded, in so far as they apply to the issues in this action are invalid under the Constitution of the United States, and

[fol. 19] (2) directing judgment on the pleadings, pursuant to Rule 112 of the Rules of Civil Practice, and at the argument of said motion, it having been stipulated in open court between the attorneys for the respective parties that the defendant shall be deemed to have made a cross-motion for judgment on the pleadings, and after hearing counsel for the respective parties, and after due deliberation thereon, the Court being of the opinion that

Public Resolution No. 10 of the Seventy-third Congress, approved June 5, 1933, and referred to in the paragraph marked "Second" of the answer to the amended complaint herein, providing that any obligation, theretofore or thereafter incurred, which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United States measured thereby, "shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts," is valid under the Constitution of the United States.

Now, upon reading and filing the notice of plaintiff's motion herein dated March 4, 1934, and upon defendant's cross-motion as aforesaid, upon the amended complaint herein, verified March 8, 1934, upon the answer thereto verified March 9, 1934, and upon plaintiff's reply, verified March 9, 1934, and upon filing the opinion of the Court, it is,

Ordered that plaintiff's motion, in so far as it seeks an [fol. 20] order striking out the separate and distinct defence contained in the paragraphs marked "Second" and "Third" in defendant's answer be, and the same hereby is, in all respects denied; and it is further

Ordered that plaintiff is entitled to judgment on the pleadings in this action for the sum of Twenty-two Dollars and fifty cents ($22.50); and it is further

Ordered that plaintiff's motion for judgment on the pleadings in this action is denied in all other respects; and it is further

Ordered that the Clerk of this Court is hereby directed to enter judgment in this action in accordance with the provisions of this order.

Enter.

E. S. D., Justice of the Supreme Court of the State of New York.

[File endorsement omitted.]

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IN SUPREME COURT OF NEW YORK

JUDGMENT APPEALED FROM

Upon the order of this Court made herein on the 17th day of March, 1934, and entered and filed on March 20,

1934, and all the papers upon which said order is based, [fol. 21] and upon the summons in this action dated February 1, 1934, it is

Adjudged that the plaintiff herein recover of the defendant the sum of Twenty-two Dollars and fifty cents ($22.50), and that plaintiff have execution therefor.

Judgment entered this 20th day of March, 1934.

Albert Marinelli, Clerk. (Seal.)

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In Supreme Court of New York, County of New York

[Title omitted]

Notice of Appeal to Court of Appeals

Sirs: Please take notice, that pursuant to leave granted by the Appellate Division of the Supreme Court of the State [fol. 22] of New York, for the First Judicial Department, by an order duly made and filed therein on the 16th day of April, 1934, the above named plaintiff-appellant hereby appeals to the Court of Appeals of the State of New York from the order of the said Appellate Division entered in the office of the Clerk of the said Court the 9th day of April, 1934, and from the judgment of affirmance entered thereon in the office of the Clerk of the County of New York on the 10th day of April, 1934, which order affirmed the order of the Supreme Court denying plaintiff's motion in all respects, to strike out the affirmative defense contained in the answer; and for judgment on the pleadings, and from each and every part of said order and judgment.

Dated New York, April 16th, 1934.

Yours, etc., Dwyer & Redfield, Attorneys for Plaintiff-Appellant, Office & P. O. Address: 420 Lexington Avenue, Borough of Manhattan, City of New York.

To Cravath, de Gersdorff, Swaine & Wood, Esqs., Attorneys for Defendant-Respondent, 15 Broad Street, New York City. Clerk of the County of New York.

[fol. 22a] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

Present: Hon. Edward R. Finch, Presiding Justice; Hon. Edgar S. K. Merrell, Hon. Alfred H. Townley, Hon. Edward J. Glennon, Hon. Irwin Untermyer, Justices.

ORDER OF AFFIRMANCE—April 9, 1934

An appeal having been taken to this Court by the plaintiff from the judgment of the Supreme Court, New York County, entered on the 20th day of March, 1934, and from an order entered in said Court on the 20th day of March, 1934, denying plaintiff's motion to strike out the separate and distinct defense contained in paragraph "Second" and "Third" in defendant's answer, and for judgment on the pleadings;

And said appeal having been argued by Mr. Emanuel Redfield of counsel for appellant, and by Mr. Frederick H. Wood of counsel for the respondent; and due deliberation having been had thereon,

It is hereby unanimously ordered and adjudged that the judgment and order so appealed from be, and the same are [fol. 22b] hereby, in all things, affirmed; and that the respondent recover of the appellant the costs of this appeal.

Finch, P. J., taking no part.

Enter.

E. R. F.

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IN SUPREME COURT OF NEW YORK

JUDGMENT OF AFFIRMANCE

Plaintiff above named having appealed to the Appellate Division of the Supreme Court for the First Judicial Department from the order entered in the above-entitled action on March 20, 1934, denying plaintiff's motion to strike out the separate and distinct defenses contained in Paragraphs Second and Third in defendant's answer and for judgment on the pleadings and from the judgment entered thereon on March 20, 1934, adjudging that the

plaintiff recover of the defendant the sum of $22.50, and said Appellate Division having made an order and judgment on April 9, 1934, affirming the order and judgment appealed from in all respects and the remittitur having been filed in the Office of the Clerk of this Court,

Now, on motion of Messrs. Cravath, de Gersdorff, Swaine & Wood, attorneys for the defendant-respondent, it is hereby

Adjudged, that the order and judgment heretofore entered on March 20, 1934, be, and the same hereby are in all respects affirmed.

Judgment signed this 10th day of April, 1934.

Albert Marinelli, Clerk.

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[fol. 23] In Supreme Court of New York, Appellate Division

Order Granting Leave to Appeal to the Court of Appeals —Filed April 16, 1934

The above named plaintiff, having moved for leave to appeal to the Court of Appeals from the order of this Court entered herein on the 9th day of April, 1934, and from the judgment entered therein,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Emanuel Redfield, in support of said motion, and the affidavit of Frederick H. Wood, in opposition thereto, and after hearing Mr. Emanuel Redfield, for the motion, and Mr. Frederick H. Wood, of counsel for the respondent, consenting to and joining in the application,

It is hereby ordered that the said motion be and the same hereby is granted, and this Court hereby certifies that in its opinion a question of law is involved which ought to be [fol. 24] reviewed by the Court of Appeals. Finch, P. J., taking no part.

Enter.

E. R. F.

[File endorsement omitted.]

IN SUPREME COURT OF NEW YORK

AFFIDAVIT OF NO OPINION

Emanuel Redfield, being duly sworn, says that he is one of the attorneys for the plaintiff-appellant and is familiar with all the proceedings had in this action.

That no opinion was rendered by any of the Courts herein.

Emanuel Redfield.

Sworn to this 19th day of April, 1934.

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IN SUPREME COURT OF NEW YORK

STIPULATION WAIVING CERTIFICATION

It is hereby stipulated, that the aforegoing are true and correct copies of the notices of appeal, orders and judgments appealed from, and of all of the papers upon the Court below acted in making said orders and judgment now on file in the office of the Clerk of the County of New York, and certification thereof is hereby waived.

Dated New York, April 19th, 1934.

Dwyer & Redfield, Attorneys for Plaintiff-Appellant. Cravath, de Gersdorff, Swaine & Wood, Attorneys for Defendant-Respondent.

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[fol. 25] IN COURT OF APPEALS OF NEW YORK

NORMAN C. NORMAN, Appellant,

ag'st

THE BALTIMORE AND OHIO RAILROAD COMPANY, Respondent

REMITTITUR—July 3, 1934

Be it remembered, That on the 23rd day of April, in the year of our Lord one thousand nine hundred and thirty-four Norman C. Norman, the appellant in this cause, came hereunto the Court of Appeals, by Dwyer & Redfield, his attorneys, and filed in the said Court a Notice of Appeal

and return thereto from the order and judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And the Baltimore and Ohio Railroad Company, the respondent in said cause, afterwards appeared in said Court of Appeals by Cravath, de Gersdorff, Swaine & Wood, its attorneys,

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed,

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Frederick H. Wood, of Counsel for the respondent, and submitted by counsel for the appellant, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of [fol. 26] the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court there to be proceeded upon according to law.

Therefore, It is considered that the said judgment be affirmed with costs as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Wm. J. Armstrong, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office

Albany, July 3, 1934.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Wm. J. Armstrong, Clerk. (Seal.)

[fol. 27] In Supreme Court of New York, Special Term—Part II

[Title omitted]

Order on Remittitur—July 9, 1934

Plaintiff above-named having appealed to the Court of Appeals of the State of New York pursuant to an order of the Appellate Division of the Supreme Court for the First Judicial Department made herein on the 16th day of April, 1934 granting leave to appeal from the order of said Appellate Division made and entered herein on the 9th day of April, 1934 and from the judgment entered upon said order in the office of the Clerk of the County of New York on the 10th day of April, 1934, which order and judgment affirmed the order of the Supreme Court, New York County, made on the 17th day of March, 1934, and entered in the office of the Clerk of the County of New York on the 20th day of March, 1934, and the judgment upon said order entered herein in the office of the Clerk of the County of New York on the 20th day of March, 1934, and after argument, said Court of Appeals having made an order and judgment on the 3rd day of July, 1934, affirming said order of said Appellate Division and the judgment entered thereon, with costs, and ordered that the record therein and the proceedings in said Court of Appeals be remitted to the Supreme Court, there to be proceeded upon according to law,

Now, upon reading and filing the remittitur of the said Court of Appeals, and upon motion of Cravath, de Gersdorff, Swaine & Wood, attorneys for the defendant herein, it is

Ordered and adjudged that the said order and judgment [fol. 28] of the Court of Appeals of the State of New York be, and the same hereby are, made the order and judgment of this Court.

Enter.

P. S., J. S. C.

[fol. 29] In Supreme Court of New York, New York County

Norman C. Norman, Plaintiff,

against

The Baltimore and Ohio Railroad Company, Defendant

Judgment on Remittitur

Plaintiff above named having appealed to the Court of Appeals of the State of New York, pursuant to an order of the Appellate Division of the Supreme Court for the First Judicial Department made herein on the 16th day of April, 1934, granting leave to appeal, from the order of said Appellate Division made and entered herein on the 9th day of April, 1934, and from the judgment entered upon said order in the office of the Clerk of the County of New York on the 10th day of April, 1934, which order and judgment affirmed the order of the Supreme Court, New York County, made on the 17th day of March, 1934, and entered in the office of the Clerk of the County of New York on the 20th day of March, 1934, and the judgment upon said order entered herein in the office of the Clerk of the County of New York on the 20th day of March, 1934, and after argument, said Court of Appeals having, on the 3rd day of July, 1934, ordered and adjudged that said judgment of said Appellate Division be affirmed, with costs, and having further ordered that the record therein and the proceedings in said Court of Appeals be remitted to the Supreme Court, there to be proceeded upon according to law, and the remittitur of the said Court of Appeals having been filed herein in the office of the Clerk of this Court on the 9th day of July, 1934, and an order having been entered herein on the 9th day of July, 1934, making said order and judgment of the Court of Appeals of the State of New York the order and judgment of this Court,

Now, on motion of Cravath, de Gersdorff, Swaine & Wood, attorneys for defendant herein, it is hereby

[fol. 30] Adjudged that the said orders and judgments hereinabove described be, and the same hereby are, in all respects affirmed.

Judgment signed this 9th day of July, 1934.

Albert Marinelli, Clerk. (Seal.)

[fols. 31 & 32] Reporter's Certificate to opinion omitted in printing.

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Certificate of Chief Judge to reporter and clerk omitted in printing.

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[fol. 33] In Court of Appeals of New York

Norman C. Norman, Appellant,

vs.

The Baltimore & Ohio Railroad Company, Respondent

Appeal by Permission of the Appellate Division, First Department, Affirming Judgment of Special Term

Emanuel Redfield for appellant.
Frederick W. Wood for respondent.

Opinion

Pound, Ch. J.:

The point for decision in this case depends upon the constitutionality of the joint resolution of Congress known as Public Resolution No. 10 of the Seventy-Third Congress, entitled, "Joint Resolution To Insure Uniform Value To The Coins and Currencies of the United States," approved June 5, 1933 (Mason's U. S. Code, Title 31, ch. 8, Sect. 430-4; 48 Stat. —), as related to the standard gold clause contained in a corporate bond issued by defendant for payment of principal and interest "in gold coin of the United States of America of or equal to the standard of weight and fineness existing on Feb. 1, 1930". The action is on a bond coupon calling for payment of $22.50. The complaint demands payment in gold, or its equivalent, which was alleged to be $38.10. Judgment was directed for $22.50 called for on the face of the coupon.

Defendant interposed as a defense Public Resolution No. 10 above cited, by which it was authorized and required to discharge the principal and interest of such bond and coupon in any coin or currency of the United States which at the time was legal tender for public and private debts

and not otherwise. The Court refused to strike out such defense.

In view of the enormous property value at stake and the possibility that Congress may stamp as legal tender such a vast quantity of paper money as potentially to destroy the value of all past promises to pay in the future, the decision of the Supreme Court of the United States on the question will be fraught with the gravest results. It is becoming that we should express our views on the question, even though the ultimate decision rests with the court of last resort on questions arising under the Federal Constitution.

No controlling authority may be found for the rule that the money power of Congress may make public currency legal tender for obligations expressly limited to payments in gold (cf. Matter of Missouri Pacific R. R. Co., U. S. [fol. 34] District Court, decided June 20, 1934, U. S. Law Week, June 26, 1934, index p. 945). The constitutionality of such legislation is sought, to be found in the delegated powers of Congress and the implied powers deduced therefrom. We must reason from the Constitution and decided cases to reach our conclusion.

Congress has power "to coin Money, regulate the Value thereof" (U. S. Const. Art. I, Sec. 8, para. 5). It also has power to enact laws necessary to enforce the Constitution (U. S. Const. Art. I, Sec. 8, Para. 18). It also has the power, prohibited to the States (U. S. Const. Art. I, Sec. 10, Para. 1) to impair contracts by the exercise of its lawful powers (Knox vs. Lee, 12 Wall. 457).

The contract sued on is payable in coin and not in commodities (Trebilcook vs. Wilson, 12 Wall. 687). It is a contract to pay money, none the less because it designates gold coin rather than other kinds of money which the law has made a legal tender in discharge of money obligations (Thompson v. Butler, 95 U. S. 694, 696, 697). The power to coin money and the general powers of sovereignty permit Congress to "make the notes of the government a legal tender in payment of private debts as necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States." The question of the economic significance of the money power of Congress is a political one and not a judicial question

to be passed upon by the courts (Juilliard v. Greenman, 110 U. S. 421, 450).

The rule seems well established that Congress may establish a uniform national currency, declare of what it shall consist, endow that currency and every unit thereof with the character and qualities of money having a defined legal value by requiring its acceptance and its face value, as legal tender in the discharge of all debts, whether pre-existing or subsequently incurred, and to regulate the value of such money, unless by so doing property is or may be taken without due process of law.

It is contended that to subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place, to this extent, the power to [fol. 35] coin money and regulate its value in the hands of private individuals and thus to impair the sovereign power delegated to the National Government (Philadelphia *P.* B. & W. R. R. Co. — Shubert, 224 U. S. 603).

Considerations of conveniences are not without weight. All arrangements for payment in money in the future are necessarily under the paramount authority of the political sovereign delegated powers of Congress. The courts should not interfere with the economic policies adopted by Congress, if such powers are vested in that body.

Those who would affirm the unconstitutionality of an act of Congress must do more than raise a doubt; they must do more than establish the unwisdom of the legislation; they must show clearly that it is in violation of the provisions of the Constitution.

State courts should uphold the constitutionality of such acts of Congress whenever possible. If the gold clause in contracts is an interference with the ability of the government to accomplish legitimate results it may well be argued that Congress may remove such interference without regard to consequences.

The choice of the means to accomplish a lawful purpose is a matter for Congress as long as the means are fairly related to the end. The scope of the money power of Congress is so wide that this court will not, in the case presented, venture to invalidate the legislation directed to that end.

The judgment should be affirmed with costs.

Crane, Lehman, and Hubbs, JJ., concur; O'Brien, J., dissents and votes to reverse; Crouch and Loughran, JJ., not sitting. Judgment affirmed.

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[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 24] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.